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Held at the Palais Wilson, Geneva,
on Thursday, 19 July 2001 at 3 p.m.

Chairperson: Mr. BHAGWATI

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 5) (continued)

Second periodic report of the Democratic People's Republic of Korea (CCPR/C/PRK/2000/2; CCPR/C/72/L/PRK; HRI/CORE/1/Add.108)

1. At the invitation of the Chairperson, the members of the delegation of the Democratic People's Republic of Korea took places at the Committee table.

2. The CHAIRPERSON invited the head of the delegation to make an introductory statement to the Committee.

3. Mr. RI Chol (Democratic People's Republic of Korea) said that the guiding principle of his country's approach to human rights was the Juche. According to that philosophy, human beings were the masters of their own destiny, and were responsible for solving their own problems to the best of their ability, remembering that their efforts must always contribute to the good of the people. His Government believed that the will of the people was the best possible guide to human rights, and its approach embodied that will.

4. The laws of his country did not permit inequality, instability, exploitation and other social evils. Every citizen was entitled to free education and health care, as well as adequate housing and employment in accordance with his or her abilities. Society paid particular attention to protecting women and children, the elderly and the disabled. Social problems such as unemployment, illiteracy, homelessness, violence, drug abuse and prostitution were unknown in the Democratic People's Republic of Korea (DPRK). He was extremely proud of what his country had achieved through the pursuit of popular policies since the founding of the Republic.

5. Nevertheless, hostile forces had raised significant barriers to the full enjoyment of human rights in the DPRK, in particular, through unilateral political pressure, reckless military threats and economic sanctions designed to suffocate the country and its people. Those difficulties had been exacerbated by the disappearance of his country's major trading partner, and by successive natural disasters. His people had rallied round their leader, Kim Jong Il, and the Government had redoubled its efforts to promote and protect human rights.

6. Since the consideration of its initial report, the DPRK had amended or supplemented its Constitution on two occasions, adopted 49 new laws and amended or supplemented 11 major laws with a view to improving the legal framework for human rights. The recently enacted Treaty Law provided that international agreements ratified by the State would have the same status as domestic legislation. His Government had translated, published and given wide distribution to international instruments including the Covenant on Civil and Political Rights, and had organized training courses to ensure that law enforcement officials were fully acquainted with their requirements.

7. The right of peoples to self-determination was a prerequisite for the enjoyment of human rights. The Constitution provided that the sovereignty of the State rested with the workers, peasants, working intellectuals and all other working people. They had freely chosen the system of Korean-style socialism because of its basis in equality and freedom from oppression.

8. The Government had made it a priority to protect the right to life by pursuing efforts to prevent the threat of war on the Korean peninsula. It had enacted the Law on Environmental Protection in 1986, and had taken a series of practical measures to prevent pollution. It had also consolidated legislation on public health by enacting laws such as the Law on Medical Care, the Law on the Prevention of Infectious Diseases and the Law on the Administration of Medical Supplies. It had significantly reduced the scope of the death penalty, by withdrawing it from 32 out of 37 articles of the Criminal Code, and by raising the minimum age for its application to 18. The use of weapons by security officers had been restricted by implementation of a new Law on Control for Public Security.

9. The Criminal Procedures Act had been amended and supplemented in January 1992, enhancing the protection of human rights in criminal proceedings, including the reinforcement of the right to legal counsel. The new Lawyers' Act, adopted in December 1994, included extensive provisions on the duties and procedures of the legal profession. The revised Regulations on the administration of detention chambers and reform institutions were consistent with the Standard Minimum Rules for the Treatment of Prisoners, and ensured that the rights of detainees were fully protected. Regulations on criminal compensation had been enacted to compensate the victims of wrongful arrest or conviction.

10. A new Family Law had been adopted which drew on measures of protection for the family developed over previous years. His Government strongly believed that the future of the nation depended on education. Consequently, it had made great efforts to develop pre-school education, as well as to consolidate the provision of 11 years of free and compulsory education. The Constitution guaranteed equality between men and women in all areas of life, which included the right to vote and to stand for election. Special protection was afforded to mothers and children, including guaranteed maternity leave, the reduction of working hours for mothers with several children, the extension of the network of maternity hospitals and other policies coming within the scope of the Labour Law and the Public Health Law.

11. Every citizen was entitled to participate in politics through the people's representative bodies and assemblies, including the Supreme People's Assembly. The Elections Law of 1992 elaborated on the constitutional provision that all citizens aged 17 or over had the right to participate in and stand for election, irrespective of sex, race, occupation, length of residence, property status, education, party affiliation, political views or religion. Elections were conducted on the basis of universal, equal and direct suffrage by secret ballot. Pursuant to the regulations on the selection of public servants, anyone with a determination to serve the people and sufficient ability was entitled to work as a public official.

12. The division of the nation imposed by external forces was a huge obstacle to his Government's human rights objectives. The political and military confrontation between north and south, which had lasted for over half a century, had caused incalculable damage to the people's enjoyment of human rights and unnecessary confrontation in international forums.

However, the historic Pyongyang meeting and the North-South Joint Declaration of 15 June 2000 had led to a thaw in relations and opened the way to exchange and cooperation. In the future, there would be an opportunity for further dialogue and contact in the political, military, economic, cultural and humanitarian fields. Those developments demonstrated that the north and south of Korea could resolve their difficulties and achieve national reunification for themselves. He asked the Committee for its support in his country's efforts to seek reunification.

13. His Government attached considerable importance to the dialogue with United Nations treaty monitoring bodies. It had recently acceded to the Convention on the Elimination of All Forms of Discrimination against Women, and had drafted its second periodic report pursuant to the Convention on the Rights of the Child. He was looking forward to a constructive dialogue with the Committee.

14. The CHAIRPERSON invited the delegation to reply to questions 1 to 14 of the list of issues, relating to the status of the Covenant in the courts; the statement that "the State does not tolerate any interpretation that restricts the rights and freedoms set forth in the Covenant"; ratification of the first Optional Protocol to the Covenant; the legal status of non-governmental organizations (NGOs); the right to self-determination under article 1 of the Covenant; protection of the right to life, including the right to adequate food; alleged instances of enforced or involuntary disappearances of persons; the application of the death penalty; alleged acts of torture and ill-treatment; confinement in "reform institutions" and "prison camps"; forced or compulsory labour in public works projects; pre-trial and preventive detention; permission to travel within and outside the country, and the treatment of citizens who were forcibly returned to the country.

15. Mr. SIM Hyong Il (Democratic People's Republic of Korea), in reply to question 1 (status of the Covenant), said that international agreements had the same status as domestic law, and if a provision of the Covenant came into conflict with domestic legislation, the former would prevail. For example, under the previous Criminal Code, 17 years had been the minimum age for the death penalty, although courts had directly applied the provisions of the Covenant to establish that age at 18 years, before the Code had eventually been changed to bring it into line with the Covenant. The pre-eminence of the Covenant was established in the Treaty Law, the Civil Law, the Law on External Civil Relations, the Law on Foreign Investment Business Enterprise, the Customs Law and the Copyright Law.

16. In reply to question 2 (interpretation of the Covenant), he said that in order to prevent arbitrary interpretations of the Covenant that might violate its fundamental spirit and requirements, the State had bestowed responsibility for matters of interpretation on its most senior body, the Presidium of the Supreme People's Assembly. Domestic laws prohibited courts and administrative bodies from restricting or derogating from the rights and freedoms protected by the Covenant.

17. Replying to question 3 concerning ratification of the first Optional Protocol, he said that a lively debate on the subject had taken place in the country. Those in favour of proceeding with ratification held that there was no reason for the People's Republic not to do so, since it had ratified the Covenant without reservation and was bringing domestic legislation into line with its provisions. Opponents of ratification argued that a well-organized and rigorous complaints and

petitions system already existed in the country and that the competent public bodies were required to deal impartially with all issues raised. Hence there was no need to have complaints considered abroad. No final decision had been taken on the subject.

18. Replying to question 4 concerning NGOs and procedures for dealing with complaints and petitions, he said that prior to the 1990s public organizations such as the Federation of Trade Unions, the Union of Agricultural Working People, the Youth League and the Women's Union had protected and promoted the human rights of their members. The Bar Association and the Democratic Lawyers' Association had focused exclusively on human rights. In the 1990s, with the increased attention paid to human rights and compliance with newly ratified international instruments, a number of independent human rights organizations such as the Institute for Research on Human Rights, the Association for Assisting Handicapped Persons and the Committee to Demand Compensation for Army Comfort Women and Victims of the Pacific War had been established. In the light of research findings and on the basis of collective discussion and decision-making, they submitted legislative recommendations, administrative proposals and plans for raising individual human rights issues with the highest organs of the State and other competent bodies.

19. The Law on Complaints and Petitions established procedures for the submission, reception, registration, examination and disposal of complaints and petitions, laid down guidelines for State monitoring of the system and established guarantees of effective implementation. All citizens were free to lodge complaints or petitions directly or through a guardian or attorney, orally or in writing, with any institution, enterprise, organization or official, including the highest organs of State. Every grievance was subjected to a careful and impartial examination, and officials were required to respond within a prescribed period. The central complaints authority supervised local units, ensuring that no pressure was exerted on complainants and that their complaints were not dealt with in a random way. Anyone failing to comply with instructions was subjected to criticism, disciplined or prosecuted, depending on the gravity of the offence.

20. Replying to question 5 concerning article 1 of the Covenant, he said that the social and political system of the Democratic People's Republic of Korea was the embodiment of the will of the masses and the ideal of "belief in the people as in God". Following the country's liberation from Japanese colonial rule, people's committees had been set up by popular initiative as the cornerstone of the democratic system. Feudalism had given way to a system of land reform under which the land was redistributed among the peasants, who accounted for over 85 per cent of the population. The Law on Nationalization of Major Industries, the Law on Gender Equality and other laws to ensure democratization had been enacted. The Democratic People's Republic of Korea (DPRK) had been founded in 1948 in response to the people's will expressed in a general election. But the country had been impoverished by the Korean War and its small-scale private economy had been unfit for sustainable development. A unique socialist system based on cooperative farming and the socialization of private trade and manufacture had therefore been established - not by application of a ready-made formula but in response to the people's choice based on mature consideration.

21. Replying to question 6 concerning the right to life and measures taken to meet the basic needs of the population, he said that the State had taken vigorous action to deal with the consequences of successive natural disasters, to revive the economy and to ensure an adequate food supply, inter alia through the seed revolution, potato farming, "two crops a year" farming, the promotion of land levelling and rezoning projects, a campaign to breed grass-eating livestock such as rabbits and goats, and the establishment or modernization of fish, chicken and even ostrich farms. Basic foodstuff and light industry factories supplying basic consumer goods, foodstuffs and other necessities had been reorganized to ensure that they could operate at full capacity.

22. Tens of thousands of modern dwellings and service facilities were under construction to improve living conditions. To address the problem of energy shortages, small, medium and large-scale hydroelectric power plants were being constructed.

23. Replying to question 7 on alleged instances of disappearances, he said that baseless rumours of the disappearance or detention of public officials had been spread outside the country by hostile elements when the officials' names failed to appear in newspaper reports for some time. The phenomenon of enforced or involuntary disappearances did not exist in the DPRK. People had only been known to disappear in the aftermath of floods or other natural disasters. In such cases, the people's committees and the security services took nationwide action to trace them. After the unprecedented floods of 1995, for example, old people deprived of their homes had been housed with close relatives or taken into old people's homes and orphaned children had been sent to orphanages, baby farms or special schools.

24. Replying to question 8 concerning the death penalty and alleged public executions, he listed the five offences that still carried the death penalty: conspiracy against State power, high treason, terrorism, anti-national treachery and aggravated intentional homicide. In the case of conspiracy against State power, it was imposed on the instigator, mastermind or principal culprit in an armed revolt to overthrow the Republic; in the case of high treason on a citizen who defected to a foreign country for the purpose of overthrowing the Republic; in the case of terrorism on a person found guilty of an extremely serious offence of terrorism against cadres and patriots with a view to opposing the Republic; in the case of anti-national treachery on a Korean national who opposed the national liberation and revolutionary struggle in collusion with imperialists and acting under their control, or who betrayed the Korean nation by selling its interests; in the case of aggravated intentional homicide on a person who committed murder out of greed, jealousy or other base motives or in order to conceal a serious crime, murder by brutal means or means that endangered the lives of a number of persons, or the murder of one or more dependants or persons entrusted to his or her care. Of the 15 death sentences handed down since 1998, 13 had been carried out and 2 commuted. The only public execution in the DPRK had been carried out in October 1992 at the unanimous request of the inhabitants of the area where the crime had been committed. The executed man, who had habitually resorted to acts of violence, had been sentenced to death for the brutal murder of his grandparents.

25. Replying to question 9, he said that allegations that torture and acts of ill-treatment were common in labour reform institutions and detention facilities were unfounded. Torture and ill-treatment were prohibited by the Criminal Procedures Act, the Regulation on Detention Chamber Administration and other laws, which were strictly implemented in practice.

Individual law enforcement officials had been known to beat inmates who breached prison regulations. The officials concerned were invariably subjected to criticism or punishment. Since 1998, six complaints of torture or ill-treatment had been lodged and administrative punishment had ensued in all cases.

26. Replying to question 10 (a), he said that individuals could be placed in reform institutions for 12 anti-State crimes such as conspiracy against State power, espionage, subversion and sabotage; 41 economic crimes such as stealing State property, fraud, misappropriation of funds, smuggling, breaches of anti-pollution legislation, breaches of the regulations on labour safety technology and traffic offences; 6 crimes of impairment of culture such as medical malpractice and drug abuse; 38 crimes of violation of public order and administration such as divulgence of secrets, negligence of duty, ignoring a complaint or petition, delinquency and gambling; and 21 crimes of impairment of life and property such as murder, defamation, rape, plunder of private property and fraud. The term of confinement in a reform institution ranged from 6 months to 15 years, the average term being 3 years. There were three institutions, which had housed 1,153 inmates at the end of 1998, 3,049 at the end of 1999 and 1,426 at the end of 2000.

27. Replying to question 10 (b), he said that allegations concerning the existence and operation of so-called secret "prison camps" had been fabricated by elements bent on slandering the Democratic People's Republic of Korea.

28. Replying to question 10 (c), he said that the Regulation on Reform Administration, which laid down the conditions governing detention in reform institutions, was strictly implemented. The institutions were equipped with bedrooms, bathrooms, dining-rooms, workshops, education rooms, libraries, infirmaries and other facilities, as well as with natural and electric lighting, ventilation and heating. The inmates were provided with meals, drinking water, clothing, bedding and health care. Doctors checked their physical condition and provided appropriate medical treatment free of charge. Reform institution officials received special training and were prohibited from torturing or insulting inmates. There was an eight-hour working day and inmates were paid according to the quantity and quality of their work. They had access to books, magazines and newspapers, could watch films and television, listen to the radio, play games or engage in sport. They were visited by and corresponded with their family and relatives. Inmates who sincerely repented, conscientiously observed the rules and worked hard to fulfil their labour assignment could have their term commuted.

29. Replying to question 10 (d) concerning access by the International Committee of the Red Cross to detention centres and reform institutions, he said that the DPRK attached importance to dialogue with international human rights and humanitarian organizations. An Amnesty International delegation had visited the country twice to inspect detention centres and reform institutions. But the authorities concerned were highly sensitive about such visits because of the tense political and military environment on the Korean peninsula and the blatant attempts of dishonest hostile forces in recent years to use human rights issues for political purposes.

30. Replying to question 11, he said that allegations that forced or compulsory labour was used for public projects were doubtless based on a misunderstanding. Major construction projects by soldiers of the People's Army, land development projects such as tree planting in the

spring and autumn, or practical training courses for students in factories and the countryside pursuant to the policy of combining studies with productive work could not be considered to constitute forced or compulsory labour, since the people involved were working for themselves and the community.

31. Replying to question 12 on pre-trial and preventive detention, he said that a person might be confined in a detention chamber if he/she was subject to preliminary investigation or accused of a crime liable to the death penalty or to imprisonment for one year or more. The purpose of the detention was to ensure that the suspect did not abscond, destroy evidence or commit a further offence. If none of those things was likely to happen, the suspect was not detained. A pregnant woman could not be detained within three months of her expected date of delivery, or for seven months after her child was born.

32. The decision to institute legal proceedings was made by a public prosecutor, who could order the release of an arrested person if it was unjustified. A person subject to legal proceedings was presented with a warrant giving the reason for his/her detention, and his/her family or organization was informed of the date of the arrest, the reason and other details. An accused person was treated as innocent until he/she was convicted, in accordance with the Regulation on Administration of Detention Chambers, and his/her human rights were guaranteed.

33. Pre-trial detention could take the form of house arrest or confinement to the person's town or village of residence. House arrest had to be supervised by at least two warrantors, and the person concerned was required to sign a written agreement to abide by its conditions.

34. There was no system of preventive detention in the Republic. Preventive detention had been used during the period of Japanese colonial rule, and had been abolished when the DPRK had regained its independence.

35. Replying to question 13 concerning travel restrictions, he said that citizens needed a travel permit to go to the Military Demarcation Line (the border with the Republic of Korea), military bases, munitions factories and other restricted areas. Only people on official business or those visiting relatives were allowed to travel to those areas. Permits were also required for travel within the rest of the country, but they could be obtained without restriction. The permit system was necessary to guarantee national security and thwart the activities of spies and saboteurs.

36. Citizens were free to travel abroad with a permit issued by the Ministry of Foreign Affairs or the immigration authorities. They were not permitted to travel if they were criminals, insane or suffering from a communicable disease, or if they did not have permission from the country of destination. In 1998, 65 of 17,440 applications to travel abroad had been refused. One of the applicants had been implicated in a crime, and the rest had not received permission from the country of destination. In 1999, 104 of 29,875 applications had been refused. Two of the applicants had suffered from mental illness or a communicable disease, and the remainder had not received permission from the country of destination. In 2000, 35,650 people had applied, and 91 had been refused because of failure to obtain permission from the country of destination.

37. In reply to question 14 concerning the treatment of citizens who were forcibly returned to the Republic, he said that it was accepted, both in law and in practice, that some people sought refuge in other countries. Those who were repatriated or extradited under bilateral agreements were investigated to ensure that they had not been involved in smuggling or other crimes and, if not, no action was taken.

38. The question referred to seven refugees who had been returned to the Republic by China in January 2000. The true figure was six. Two of those concerned, Ho Yong Il and Pang Yong Sil, had been convicted of theft from and arson of a warehouse in North Hamhung province in June 1999, which had caused damage amounting to 1 billion won. On their return to the Republic, they had been sentenced to corrective labour for nine years and five years, respectively. The other four were: Ri Dong Myong, now working in a gymnasium in Pyongyang City; Zang Ho Yong, now working in a furnishings factory; Kim Kwang Ho, now a construction worker in Hamhung City; and Kim Sung Il, a minor who had returned to secondary school.

39. Mr. AMOR thanked the delegation for its report and for its full and clear replies to the questions raised by the Committee. However, it was regrettable that the report did not contain more information about the actual situation in the State party, rather than its legislation. The Committee had received reports from a number of sources which indicated that the human rights situation in the DPRK was less than satisfactory; they were perhaps exaggerated, but they were detailed and mutually consistent. He was concerned in particular about reports of forcible repatriation, the death penalty, and detention and prison conditions. The Committee was not accusing the Government: it merely wished to understand the true situation.

40. Another cause for concern was the apparent elasticity of many of the legal rules and concepts in the State party's legal system. The death penalty, for example, appeared to be applicable to a very wide range of crimes. Justice came from the law, and the law must be precise.

41. He asked about the position of the Covenant in the legal system. Was it true that the Supreme People's Assembly had adopted a standard interpretation of the Covenant, which was binding on the courts? Did the courts apply the Covenant itself, the interpretation by the Supreme People's Assembly, or pertinent provisions of national legislation? What scope did a judge have to interpret the provisions of the Covenant in relation to a particular case? Some of the State party's legislation was very different from the Covenant, such as the regulations governing internal travel, which the delegation had described.

42. He did not understand the position of non-governmental organizations in the State party. Social and professional organizations had been set up in the 1980s and had developed a complaints procedure during the 1990s, but did they satisfy the Committee's definition of NGOs: independent organizations for the defence of human rights? How many such organizations were there, what exactly did they do and under what conditions did they operate? Were foreign human rights organizations allowed to operate in the Republic?

43. He was concerned about the broad definition of capital crimes (paragraph 35 of the report). Although the death penalty had been carried out only rarely in recent years, the five offences for which it could be imposed covered a very wide range.

44. The delegation had stated that six cases of torture had been recorded since 1998 and that the perpetrators had been punished. However, even the most democratic countries reported many hundreds of cases of torture, violence and other cruel, inhuman or degrading treatment of a kind prohibited under article 7 of the Covenant. He would welcome further information from the delegation on that point.

45. He wished to be given more information about the detention of suspects and accused persons. If individuals were arrested by the police, how long could they be held in police custody before being taken before a court - 24 hours, or 48 hours, or two months, or some other period? Did the suspect have access to a lawyer or a physician during that time, and was he/she informed of the alleged offence? When individuals had been accused of an offence, how long could they be held in pre-trial detention? What guarantees of their rights were provided during that time, and how did they prepare their defence? How did the State guarantee the provisions of article 14 of the Covenant (right to a fair trial)?

46. The delegation had stated that forced labour did not exist: however, the examples given were of voluntary work, which was not the same thing. He failed to see how the "reform through labour" described in paragraph 55 of the report differed from forced labour.

47. Mr. SCHEININ welcomed the members of the delegation, whose wide range of expertise would be most valuable to the Committee, given the paucity of information about the State party available from other sources. It was regrettable, however, that the report before the Committee was only the second periodic report, even though the DPRK had acceded to the Covenant in 1981.

48. He welcomed the State party's declared commitment to the abolition of the death penalty (paragraph 40 of the report). What further steps did it intend to take to achieve full abolition? He was concerned that capital offences (para. 35) were much wider in scope than the "most serious crimes" referred to in article 6 of the Covenant. Four of the five were political crimes, i.e. crimes against the State rather than crimes against the life or physical integrity of a human being. He was particularly concerned about the mandatory death penalty for attempts to "suppress and persecute the national liberation struggle" (Criminal Code, article 52) and the possibility of the death penalty for defection (Criminal Code, article 47). The latter provision was surely not compatible with article 12 (2) of the Covenant on the right to leave any country, including one's own. The delegation had given details of death sentences imposed since 1998: on what grounds had they been imposed?

49. According to paragraph 24 of the report, there was no legislation governing the proclamation of a state of emergency. However, under article 103 of the Constitution, the National Defence Commission, the highest military authority, could proclaim a "state of war". How did the State party justify the fact that a state of war could be declared by a military authority, when it would presumably affect the normal operation of society and decision-making bodies?

50. Paragraph 24 referred to an interpretation of article 103 of the Constitution by the Presidium of the Supreme People's Assembly, stating that the "non-derogative" rights of citizens could not be restricted even in a state of war, which presumably meant that other basic rights might be restricted in such circumstances. However, the Constitution itself contained no provision for the restriction of any rights during a state of war. He would welcome the delegation's comments on that point. Were "non-derogative" rights the same as those covered by article 4 (2) of the Covenant?

51. Article 83 of the Constitution stated that work was the "noble duty and honour of a citizen" and that "citizens shall willingly and conscientiously participate in work". Did those statements constitute a legal obligation and, if so, did any laws exist to implement it? Did a failure or refusal to comply with such an obligation constitute a crime punishable by forced labour or some other penalty?

52. He asked for more details of the State party's interpretation of article 9 (3) of the Covenant on the right to a fair trial. Within what time period must a person in police custody be brought before a judge? From his study of the Criminal Procedures Act, it might be as much as 8 days, which was certainly not compatible with article 9 (3). Article 65 of the Criminal Procedures Act referred to the "arrest" of a suspect: did the term "arrest" refer to the moment when the suspect was apprehended, or to a formal step taken by the police at some subsequent time?

53. Mr. ANDO expressed his gratitude to the delegation for providing information about the legal system of the DPRK in booklet form. He shared Mr Scheinin's concern that the second periodic report was so long overdue. Under the Covenant system, the Committee should have the opportunity to consider the human rights situation in States parties at regular intervals, on the basis of their reports. Unless the reports were submitted regularly, the value of doing so was limited. Moreover, there was little information in the report about the human rights situation on the ground in the DPRK, nor was much information forthcoming from non-governmental or other sources. It appeared from the Constitution that considerable emphasis was placed on the collective side of rights and obligations in the DPRK, rather than individual human rights. For example, article 10 of the Constitution stated that the DPRK "rests on the politico-ideological unity of all the people based on the worker-peasant alliance led by the working class". Article 11 stated that the DPRK "shall conduct all activities under the leadership of the Workers' Party of Korea", and article 12 that the State should "firmly defend the people's power and socialist system against all subversive acts of hostile elements at home and abroad". He emphasized that human Rights were individual rights and democracy entailed freedom of choice: individuals should be able to choose their own value systems, and their choice should be respected. Did the collectivist approach to human rights, as defined in article 63 of the Constitution, affect the interpretation or application of domestic law provisions reflecting articles of the Covenant? According to the Treaty Law of December 1998, the status of the Covenant in the DPRK was supposed to be the same as that of domestic law. However, no explicit constitutional provision defined the relationship between international treaties and domestic law. Did that mean that the status of the Covenant and its relationship with domestic law could be altered by legislative action in the national assembly? The Constitution referred to states of war, but not to states of emergency, which was a much broader concept. Did that mean that the treaty law of the Covenant (art. 4) could be applied in a state of emergency?

54. The Criminal Law was very broadly framed and its provisions were open to abuse and discretionary interpretation. According to article 50, "a person who commits acts of subversion and sabotage against the country shall be committed to a rehabilitation institution for between five and eight years", and "a person who causes damage to the establishment and facilities of special importance ... shall be committed to a rehabilitation institution for not less than eight years". The offences were defined in the broadest terms. The same was true of article 47, which referred to "cases where the person commits extremely grave offence". The second periodic report did contain, in paragraph 35, a definition of five categories of "extremely grave" crimes. However, article 141 of the Constitution referred to murder committed in order "to conceal a serious crime". It was unclear whether that meant the same type of offence as specified in paragraph 35 of the report. Moreover, various of the crimes mentioned in the Criminal Law did not seem to carry a penalty with an upper limit. Article 50 referred to "not less than eight years", and article 53 to "not less than five years". What was the maximum term under those provisions? By contrast, articles 141 and 143 did specify upper limits of 10 and 3 years, respectively, for murder with extenuating circumstances, and homicide.

55. Article 53 of the Criminal Law referred to a person who was not a citizen of the DPRK and who "commits the hostile act of attempting to suppress and persecute the national-liberation struggle of the Korean people ... and the struggle of overseas Koreans for their democratic national rights and their legitimate rights under international law". The criminal jurisdiction of the DPRK could not extend to activities carried out abroad by non-citizens. Article 121 of the Criminal Law made it an offence to conceal an offender: did that apply, for instance, to a father concealing a son or daughter? Were there any mitigating circumstances for members of the same family?

56. According to paragraph 47 (b) of the second periodic report, the duties of the public prosecutor, under articles 69 and 79 of the Criminal Procedures Act, included supervising the preliminary investigation. Those articles placed no obligation on the public prosecutor to indict a person responsible for irregularities committed in the course of the investigation. Surely he had a duty to do so. The same remark applied to paragraph 47 (c), read in conjunction with article 296 of the Act, which placed no obligation on the public prosecutor to supervise the execution of judgments so as to prevent torture or inhuman treatment or punishment of prisoners.

57. Freedom of travel and residence for both citizens and foreigners was discussed in paragraphs 76 and 77 of the report. According to information he had received, a French aid group had left the DPRK after being denied permission for a field trip to ascertain that donated food supplies had reached their intended recipients. Why would permission be refused in such a case?

58. Mr. YALDEN agreed with Mr. Amor that the report contained little factual information about the human rights situation on the ground, and reminded the delegation that the Committee's concern was with the actual situation, as well as theoretical rights. On the payment of compensation to victims of illegal arrest and detention, mistreatment, torture and unlawful execution, how many times had compensation been granted, on what grounds, and in what amounts? The death penalty was apparently still in force in the DPRK for five categories of "extremely grave" crimes. What was the situation with regard to political offences: were they treated as being among the "most serious crimes" referred to in article 6 (2) of the Covenant?

What was the meaning of "anti-national treachery", mentioned in paragraph 35 of the report? In his view, article 52 of the Criminal Law did not shed much light on the matter by referring to "a Korean national who attempts to suppress and persecute the national-liberation struggle ... in collusion with imperialists". He would be glad to know precisely which offences carried the death penalty.

59. Paragraphs 76 and 77 of the report referred to tight restrictions on freedom of travel and residence. Travel within the country was subject to permission being granted by "people's committees". The southern border area and areas adjacent to military bases were out of bounds altogether. He invited the delegation to explain how those restrictions met the requirements of article 12 of the Covenant on liberty of movement. Paragraph 17 of the report described the procedure for submitting complaints of human rights violations. What sort of complaints were submitted, how many, and what was done about them? The number of complaints about ill-treatment in institutions of which the Committee had been told - only six - struck him as peculiarly small in view of the size of the country. The question about independent human rights monitoring bodies (question 4 in the list of issues) had not been satisfactorily answered: there did not seem to be any statutory provision for such bodies in the DPRK. The delegation was undoubtedly aware of the intensive work which had gone on since 1993 to develop such institutions, on the basis of the "Paris principles" approved by the General Assembly. The few non-governmental organizations in the DPRK, such as the Bar Association, did not meet those standards. Were there any plans to establish independent monitoring bodies? The "complaints box" system practised within institutions in the country did not ensure the necessary degree of independence to monitor the observance of Covenant rights.

60. Ms. CHANET shared the concern of other members of the Committee about the patchy information provided in the report. It was not clear to what extent the Covenant had been incorporated in the domestic law of the DPRK. Nor was it clear how the State complied with its undertaking, in paragraph 26 of the report, not to "tolerate any interpretation that restricts the rights and freedoms set forth in the Covenant", or how Covenant rights were interpreted in parliament or by the courts, given that they were not incorporated in the Constitution. What was the hierarchy of norms concerning human rights? Why were some Covenant rights guaranteed by the Constitution, and others not? If the Supreme People's Assembly decided on a certain interpretation, would it be binding on the courts? Chapter V of the Constitution conferred rights on "citizens"; did that mean that foreigners could be denied them, contrary to article 2 of the Covenant? She agreed with Mr. Amor that the criteria for the death penalty were very elastic, when compared with the rule in article 6 of the Covenant. The criteria set out in article 52 of the Criminal Law were especially vague. What were the "extremely grave" offences referred to in article 47? The scope for definition appeared to be designed to protect the interests of the State. What was the permitted length of preventive detention and of custodial sentences? Did the period of 48 hours mentioned in paragraph 61 of the report correspond to the period of pre-trial detention, and how did it square with the rule in article 9 (2) of the Covenant? Were individuals ever detained without criminal charges being brought against them? Some penalties specified in the Criminal Law appeared to have no ceiling: did that mean that unlimited sentences could be imposed, or could final judgments be reviewed, and if so by whom? What time limits applied to the stages of prosecution described in paragraph 61 of the report? According to article 51 of the

Criminal Procedures Act, the criminal procedure began with a decision by an investigator: what was the status of such persons? Were they members of the prosecution service and were they separate from the police? According to article 17, a criminal defendant had a right to a lawyer: at what point in the procedure did that right come into effect? Were lawyers free to organize their clients' defence as they saw fit? Were they civil servants or self-employed, and how was the criminal bar organized? How was the imposition of the death penalty under article 47 of the Criminal Law compatible with the relevant provision of the Covenant? Concerning article 13, paragraph 82 of the report made no mention of a procedure for deciding on the expulsion of an alien. Could an expulsion order be appealed?

The meeting rose at 6.10 p.m.